



OFFICE OF THE
BOARD OF APPEALS
TOWN OF DUNSTABLE
TOWN HALL
511 MAIN STREET
DUNSTABLE, MA 01827-1313

Approved
May 1, 2008

Russell Continuation of Hearing Minutes
November 6, 2007

Members Present: Wesley Goss, Chairperson
Joshua West, Clerk
Judy Thompson, Member
Alice Ekstrom, Member
Leo Tometich, Member
Al Horton, Associate Member
Lisa O'Connell, Recording Secretary and Associate Member

Petitioners Present: Rose and James Russell

Others Present: None

This meeting's intent was to file a formal decision with the Town Clerk regarding the application of Rose Russell for the properties located at 112 and 114 Thorndike Street, Dunstable, MA for a Special Permit to operate a home business for the purpose of conducting a horse boarding business. This is a continuation of the hearing opened on September 20, 2007 and continued to October 4, 2007.

Chairman, Wes Goss, called the meeting to order at 7:09 p.m. and confirmed the following facts that the board has determined thus far in the hearing process:

- Rose and Jim Russell are the property owners of 112 and 116 Thorndike Street
- Both lots encompass roughly 26 acres
- The Russell's have 16 horses on the property of which they own 2 and board 14.
- The following activities are occurring on the property
 - Manure composting
 - Raising of chickens for the sale of eggs
 - Haying of fields
- There is a conservation restriction on the land between the conservation commission and the Russell's.

The Zoning Law – MGL Chapter 40A Section 3 defines agriculture as defined in Chapter 128 section 1A as follows:

CHAPTER 128. AGRICULTURE

DEFINITIONS

Chapter 128: Section 1A. Farming, agriculture, farmer; definitions

Section 1A. "Farming" or "agriculture" shall include farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.

Chapter 40A Section 3 also states:

No zoning ordinance or by-law shall regulate or restrict the use of materials, or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate, or require a special permit for the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, nor prohibit, unreasonably regulate or require a special permit for the use, expansion, reconstruction or construction of structures thereon for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities may be limited to parcels of 5 acres or more in area not zoned for agriculture, aquaculture, silviculture,

horticulture, floriculture or viticulture. For such purposes, land divided by a public or private way or a waterway shall be construed as 1 parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to the General Laws. For the purposes of this section, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof. Said nursery stock shall be considered to be produced by the owner or lessee of the land if it is nourished, maintained and managed while on the premises.

Wes stated that according to the applicant, the boarding began in January of 2007 and the Right to Farm Bylaw was adopted by the town in August of 2006.

Wes Goss said the Board must determine if the Russell's operation is primarily agricultural based on the evidence submitted. If the board so votes, then the special permit is not required.

Al Horton motioned to vote whether the Russell's operation is primarily agricultural. Joshua West seconded the motion and all were in favor.

The vote was taken and the board voted unanimously (Leo Tometich as a new member did not vote) that the Russell's operation was primarily agricultural and the special permit was not required. It was also determined that because the operation is agricultural, the pre-existing structures do not require variances to the Dunstable Zoning By Law 11.5, because of the exemption stated in MGL 40A section 3; however the exemption does not apply to the state building code compliance.

Joshua West motioned to close the hearing. Alice Ekstrom seconded the motion and all were in favor. The hearing was closed and adjourned at 7:55 p.m.